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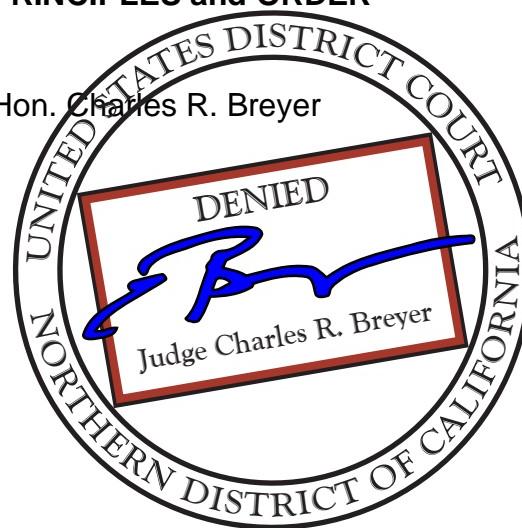
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9 Counsel for FedEx Corporation,  
10 Federal Express Corporation and  
11 FedEx Corporate Services, Inc.

12 UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA, )  
16 Plaintiff, )  
17 v. )  
18 FEDEX CORPORATION, FEDERAL )  
19 EXPRESS CORPORATION, and FEDEX )  
20 CORPORATE SERVICES, INC., )  
21 Defendants. )

) No. CR 14-380 (CRB)  
)  
) FEDEX DEFENDANTS'  
) ADMINISTRATIVE MOTION FOR  
) LEAVE TO SEEK RECONSIDERATION  
) CONCERNING THE VIOLATION OF  
) CONSTITUTIONAL FAIR WARNING  
) PRINCIPLES and ORDER



1 FedEx Corporation, Federal Express Corporation and FedEx Corporate Services,  
2 Inc. (collectively, "FedEx") hereby request leave to seek reconsideration of a Court  
3 order.

4 In May 2015, the Court denied FedEx's Motion to Dismiss the Indictment  
5 Pursuant to the Common Carrier Exemptions in Title 21 of the United States Code. See  
6 Dkt. 87 (Motion); Dkt. 105 (5/14/2015 Hrg Tx). One feature of FedEx's motion was an  
7 argument that a conviction under the superseding indictment would offend the Fifth  
8 Amendment by imposing a criminal sanction in the absence of fair warning that the  
9 charged conduct violated the criminal laws. Dkt. 87 at 35-39. However, the parties did  
10 not discuss that ground during oral argument. See Dkt. 105, *passim*.

12 Since the date that FedEx's motion was argued, the Court has asked the parties  
13 to brief the question whether there has been "another criminal prosecution in the United  
14 States of America of a common carrier which it is recognized is engaged in legitimate  
15 business transactions — so it's not just set up for the purpose of delivering drugs — of  
16 this type?" Dkt. 122 at 11:11-15; Dkt. 131. The parties responded, see Dkt. 127 & 140,  
17 and the Court concluded from these submissions that this prosecution is "unique." Dkt.  
18 165 at 8.

19 FedEx acknowledges that this motion does not meet the usual requirements for a  
20 civil motion for reconsideration under Civil Local Rule 7-9. Nonetheless, FedEx  
21 believes that, given the novelty of the prosecution, and the statutory schemes that  
22 govern this case, the matter should not proceed to trial. FedEx had no fair warning  
23 under the law that the government would consider the charged conduct to be a violation  
24 of the criminal law.

26 Accordingly, FedEx requests leave to file the motion for reconsideration attached  
27 hereto as Exhibit A. Should the Court grant this motion for leave to seek  
28 reconsideration, FedEx requests that the Court file the attached motion and set a  
hearing and briefing schedule that is convenient to the Court.

1 Respectfully submitted,

2 Dated: May 5, 2016

3 ARGUEDAS, CASSMAN & HEADLEY, LLP

4 By: \_\_\_\_\_ /s/

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10  
11  
12 Counsel for Federal Express  
13 Corporation, FedEx Corporation and  
14 FedEx Corporate Services, Inc.

15 **ORDER**

16 The FedEx defendants' motion for leave to seek reconsideration is GRANTED.

17 The motion attached as Exhibit A hereto shall be deemed FILED. The government shall  
18 respond to the motion by \_\_\_\_\_ and \_\_\_\_\_ shall file a reply brief  
19 on or before \_\_\_\_\_. The matter will be heard by the Court on  
20 \_\_\_\_\_ at \_\_\_\_\_.  
21

22 IT IS SO ORDERED,

23 Dated: May 6, 2016

